

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIRST DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO : 20745 of 1994

Between:

Smt.P.Vasanta W/o.Late Sudhakar David
R/o.H.No.1-1-570,Zoin Compound Golconda X Road
Mushirabad Hyderabad.

..... PETITIONER

AND

- 1 The A.P.S.R.T.C., Rep.by its Managing Director
Mushirabad Hyderabad.
- 2 The Deputy Chief Accounts Officer (Test Audit.I)
O/o.Manaigng Director APSRTC
Mushirabad Hyderabad.
- 3 The Accounts Officer (Test Audit.I)
O/o.Vicechairman and Managing Director Mushirabad
Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to call for the records from the 2nd and 3rd respondents and issue a writ, order or direction more particularly one in the nature of Writ of Mandamus declaring that the action of the 2nd respondent in proceedings No.A.O.(T.A)/145(1)/93-F,D., dated 14-11-1994 inflicting the punishment of deferment of her Annual Grade Increments for a period of two years postponing her future increments and treating the period from 9-9-1994 to 18-9-1994 as leave without pay, as illegal, unjust, contrary to law, contrary to the regulations of the respondents corporation, in violation of the principles of natural justice, without jurisdiction, violative of articles 14,16 and 21 of the Constitution of India, and it is nothing bur only an act of victimization and un-fair labour practice and grant her the consequential relief.

Counsel for the Petitioner: MR.A.K.JAYAPRAKASH RAO

Counsel for the Respondent Nos: Mr.V.T.M.Prasad, Standing Counsel

The Court made the following :

ORAL ORDER:

The short, but interesting question that arises for consideration in this writ petition is as to whether the punishment imposed on the petitioner i.e., "Annual increments to be deferred when next falls due for a period of two years which shall have effect on future increments" would amount to a major penalty requiring an enquiry to be conducted preceding imposition of such punishment or as to whether it is a minor penalty, for which a punishment can be imposed without a departmental enquiry being conducted in this regard.

The facts to the limited extent necessary to decide the aforesaid question are that the petitioner, a Senior Superintendent with APSRTC was absent from duty from 12-9-1994 to 17-9-1994 for a period of five days. While it is the case of the petitioner that she had submitted her leave application subsequently and the said leave was sanctioned, it is the case of the Corporation that a charge sheet was issued to her on 23-9-1994 for the period of her absence and the subsequent sanction of leave, in the light of the charge sheet having been issued in this regard, ought not to have been ordered and therefore the leave sanctioned to the petitioner was cancelled, vide proceedings dated 7-11-1994 for the period of absence from 9-11-1994 to 18-11-1994 treating the period of absence as leave without pay.

Be that as it may, pursuant to the said charge sheet dated 23-9-1994, the petitioner submitted her explanation on 24-9-1994 resulting in the impugned order dated 14-11-1994 being passed wherein the punishment referred to above was imposed.

Sri A.K.Jayaprakash Rao, learned counsel for the petitioner contends that while the punishment imposed on the petitioner is couched as a minor penalty prescribed under Regulation (8)(iv) of APSRTC Employees (Classification, Control and Appeal) Regulations, 1967 (hereinafter referred to as 'the Regulations') it is in fact, a major punishment under Regulation 8(vii) thereof. Learned counsel refers to Regulation 12 in this regard, which relates to the procedure for imposing penalties. Under Regulation 12(1) no order imposing any of the penalties specified under items (i) to (vi) of Clause 1 of Regulation 8 shall be passed except after the employee concerned is informed in writing of the proposal to take action against him and of the allegations on which action is proposed to be taken and is given an opportunity to make any representation he may wish to make and such

representation is taken into consideration by the authority imposing the penalty. Under sub-regulation (2) of Regulation 12, no order imposing on an employee any of the penalties specified under items (vii)(viii) and (ix) of Clause (1) of Regulation 8 shall be passed except after an enquiry is held.

While Sri A.K.Jayaprakash Rao contends that the punishment imposed on the petitioner, is in fact, a punishment under Regulation 8(vii) and is required, under Regulation 12(2), to be preceded by an enquiry, the learned Standing Counsel for the respondent – Corporation submits that both in effect and in fact it is only a punishment under Regulation 8(iv), as such no enquiry is required to be conducted prior to imposition of such punishment and that a charge sheet followed by receipt of explanation thereto by the employee concerned would suffice to impose the said punishment.

Sri A.K.Jayaprakash Rao relies on the judgment of the Supreme Court in **KULWANT SINGH GILL v. STATE OF PUNJAB** and the judgment of this Court in **K.PRASAD v. MANAGING DIRECTOR, APSRTC, MUSHEERABAD, HYDERABAD.**

In Kulwant Singh's case (1 supra), while withholding of increments of pay was under Rule 5(iv), Sub Rule (v) of Rule 5 read thus

“reduction to a lower stage in the time scale of pay for a specified period, with further directions as to whether or not the government employee will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have effect of postponing the future increments of his pay”

Rule 5(v) which came up for consideration before the Supreme Court in KULWANTH SINGH's case (1 supra), is similar to Regulation 8(vii) of the APSRTC Regulations, which reads as under:

“reduction to a lower rank in the seniority list or to a lower post or pay in the time scale, whether in the same class of service or in another class, or to a lower stage in a time-scale”

The Supreme Court in KULWANTH SINGH's case held that the fact of imposition of punishment of withholding of two increments with cumulative effect indisputably means that the two increments earned by the employee was cut off as a measure of penalty forever in his upward march of earnings in the higher scale of pay and on expiry of two years the clock starts working from that stage afresh. It was held that

the insidious effect of the order, by necessary implication, was that the employee was reduced in the time scale by two places and it was in perpetuity during the tenure of his service and that the words, if taken in its true colour or its resultant effect, would make it clear that this punishment would require an enquiry to be held before its imposition.

In K.PRASAD's case (2 supra) the punishment imposed on the employee, i.e., 'annual increments next falls due be deferred for a period of two years which shall have effect of postponing future increments' is identical to the punishment imposed in the present case. This Court held that this punishment imposed on the employee was a major penalty and since it was held without a departmental enquiry, as envisaged under the provisions of the APSRTC C.C.A. Regulations, the order of the disciplinary authority was liable to be set aside.

The aforesaid judgments of the Apex court and this Court fully support the submission of Sri A.K.Jayaprakash Rao that the punishment of withholding or stoppage of two increments with cumulative effect is in effect a major penalty under Regulation 8(vii) of the Regulations and could only have been imposed after a departmental enquiry was held to enquire into the charges.

Since it is an undisputed fact that no departmental enquiry preceded imposition of the said punishment, the order of punishment is liable to be set aside. The writ petition is accordingly allowed. There shall, however, be no order as to costs.

1-7-2005

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That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice on this Friday, the First Day of July, Two Thousand and Five.

To:

- 1 The Managing Director, A.P.S.R.T.C.,
Mushirabad Hyderabad.
- 2 The Deputy Chief Accounts Officer (Test Audit.I)

O/o. Managing Director APSRTC

Mushirabad, Hyderabad.

3 The Accounts Officer (Test Audit.I)

O/o.Vice-chairman and Managing Director Mushirabad
Hyderabad.

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